

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 803 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHAILESHBHAI MANSUKHLAL SHAH

Versus

FOOD INSPECTOR,

Appearance:

MR RR TRIVEDI for Petitioners

NOTICE SERVED for Respondent No. 1

MR BY MANKAD ADDL PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 07/10/1999

ORAL JUDGEMENT

#. Rule. Mr.Mankad, learned APP waives service of rule for respondents. Heard Mr.A.S.Trivedi for Mr.R.R.Trivedi, learned advocate appearing for the petitioner and Mr.Mankad, learned APP for the respondents. According to the petitioner, a prosecution has been launched by respondent No.1 under Section 7(1) and (5) of the Food Adulteration Act punishable under

Section 16 of the said Act. During the pendency of the complaint, on 8th May, 1996, the petitioner accused prayed before the learned JMFC, before whom the criminal case instituted by respondent No.2 was pending, that the second sample be sent to the Central Food Authority for analysis. The application was granted but the prayer grant was conditional and the petitioner accused was asked to deposit Rs.40/- towards the fees. Feeling aggrieved by the aforesaid order, the petitioner accused approached the learned Additional Sessions Judge, Gondal under Section 397 of CrPC and prayed that the order asking the petitioner to deposit Rs.40/- should be revised and the same should be set aside. It was submitted before the learned Sessions judge that the order passed by the learned JMFC is not in accordance with law, particularly with the scheme of the Act and especially after the amendment of Section 13(2) of the Food Adulteration Act. The learned Additional Sessions Judge, Gondal, after hearing the arguments advanced by the parties, dismissed the revision application vide order dated 31st July, 1998 and therefore, this petition. Mr.A.S.Trivedi, learned advocate appearing for the petitioner has taken this Court through the decision of the Hon'ble Kerala High Court reported in case of GEORGE KUTTY VS. STATE OF KERALA, 1991(1) of Prevention of Food Adulteration Cases page 133, wherein, irrespective of the principles propounded by the Kerala High Court, the language of Section 13(2) of the Act is clear by itself and the same is reproduced hereunder for convenience;

xxx xxx xxx xxx xxx xxx

"13(2) On receipt of the report of the result of the analysis under sub section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under S.14-A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such persons or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analyzed by the Central Food Laboratory."

#. The Kerala High Court, after analyzing the provisions of Section 13(2) of the Food Adulteration Act, has observed that after the 1976 amendment, the person who applied to have sample analyzed by the Director of Central Food Laboratory, has no legal obligations to remit the prescribed fees. The Kerala High Court has referred both these sections i.e. section prior to amendment and after the amendment in Para 3 of the judgment. There is striking change in the amendment and it can be said that the amendment has converted the privilege into a legal right and the accused is now legally entitled to get the sample analyzed by praying such relief. He is not bound to pay any fees for second analysis. The principles of criminal jurisprudence accepted by the Courts of this Country has a root in the amended Section 13(2) of the Food Adulteration Act. The learned JMFC and thereafter, the learned Additional Sessions Judge ought to have seen Section itself. A plain reading of Section 13(2) is apparent and clear that there is no obligation on the part of the accused to pay any fees for second analysis. For convenience, I would like to refer the relevant part of para - 4 of the judgment of the Kerala High Court (Supra) for brevity and convenience.

"S.13(2) after 1976 amendment would thus show

that it is the obligation of the State or Local authority to subject the sample to analysis. Such analysis would be made by the Public Analyst first, and if the accused needs, such analysis must be arranged to be made at the Central Food Laboratory. The only difference is that in the analysis to be made by the Public Analyst the accused has no part to play, whereas, the Director of Central Food Laboratory cannot be asked to analyse the sample if the accused does not want it. In other words, if the accused expresses his desire to have the sample analyzed by a superior expert, law provides that it must be got done. This right or option is not conditional on the accused remitting the expenses needed for analyzing the sample. The result of such analysis by the Director of Central Food Laboratory is binding on the prosecution in the same way as it is binding on the accused because the certificate of the Director of Central Food Laboratory will supersede the report of the Public Analyst. Such certificate is not an item of defence evidence, as it takes the place of the

report of the Public Analyst. In the absence of any clear statutory insistence an accused cannot be asked to bear the expenses to bring in a document having greater probative value and substitution for the earlier document of the prosecution. Hence, the deletion of the words "on payment of the prescribed fee" from S.13(2) coupled with the other changes, conveys the message that it is no longer obligatory to the accused to bear the expenses for such analysis."

#. Mr.Mankad, Ld. APP appearing for the State has rightly submitted that looking to the provisions of Section 13(2), the Special Criminal Application filed by the petitioner requires to be allowed. Therefore, without going into further discussions, I am inclined to allow this Special Criminal Application. The order passed by the learned JMFC, below application Exh.4 dated 18th September, 1997 and order passed the learned Additional Sessions Judge, Gondal in Criminal Revision Application No : 24/ 1997 dated 31st July, 1998 are hereby quashed and set aside. Rule to the aforesaid extent is made absolute. No costs. The Learned Magistrate concerned, is directed to take appropriate steps in the matter.

Date : 7-10-1999 [C.K.Buch, J.]

#kailash#